



American Public Health Association

Working for a Healthier World

800 I Street, NW • Washington, DC 20001-3710

(202) 777-APHA • Fax: (202) 777-2534 • comments@apha.org • www.apha.org

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United States Senate
Washington, DC 20510

Dear Senator:

On behalf of our organizations and our members, we are writing to express our concerns about the so-called "investor protection" provisions in the pending Baucus/Grassley fast-track trade legislation (H.R. 3005) and their potential to undermine public health in the United States and in other countries around the world.

The proposed legislation would authorize U.S. trade officials to negotiate trade agreements that grant foreign investors the right to sue their host countries for actions that reduce the value of their investments. Foreign investors could demand financial compensation from governments based on violations of a series of vaguely worded legal standards which differ from U.S. laws or the laws of other nations, and may well grant foreign investors greater legal rights than domestic entities or individuals possess. We understand that the investor-protection provisions in the North American Free Trade Agreement (NAFTA) are the likely model for future agreements with other countries around the world.

Experience under the NAFTA demonstrates the potential for investor protection provisions to undermine public health protections:

In the Methanex case, a Canadian firm brought a nearly \$1,000,000,000 claim based on the State of California's decision to ban the sale of MTBE, a suspected carcinogen, in order to protect the State's drinking water supplies;

In the Metalclad case, a U.S. firm recovered \$16,000,000 under NAFTA, based on the refusal of a Mexican municipality to grant a permit for the construction of a hazardous waste treatment facility in the community.

In the SD Meyers case, a U.S. firm brought a successful NAFTA challenge to a Canadian government ban on the export of PCB wastes to the U.S.; and

Recently, the U.S. Crompton corporation has threatened a NAFTA suit over Canadian restrictions on a dangerous pesticide called lindane, which is a possible human carcinogen banned in Europe for agricultural use, and in California for use in anti-lice shampoo.

Beyond these specific examples, a wide variety of government measures relating to public health could potentially be challenged under NAFTA and other future trade agreements.

These include adverse judicial decisions against foreign drug or medical device manufacturers, health product labeling and restrictions on dangerous pesticides, drugs, and alcohol, and occupational safety and health measures. Regulations that monitor and



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protect access to health services, including facilities that operate in underserved rural and inner city areas, are also at risk.

Apart from the substantive legal standards in international trade agreements, we are concerned about the process for resolving disputes under international trade agreements. International arbitration proceedings are not open to the public and the records of the proceedings are not generally available for public inspection. Interested groups and individuals have no right to intervene as parties in these proceedings, and even the right of *amicus* participation is highly limited. There is no general right of appeal to the courts of the nation whose actions are being challenged.

There is no more important sovereign responsibility than protecting the health of a nation's people. Laws and other government measures to protect public health should be based on transparent, democratic decision-making. The pending trade legislation has the potential to create new international legal standards which will interfere with nations' ability to protect the health of their citizens. It also threatens to undermine the use of the democratic process in formulating public health standards.

Our organizations urge the Senate to develop appropriate amendments to the pending trade legislation, HR 3005, to ensure that foreign investors are not granted broad new legal rights to undermine vital public health measures.

Sincerely,

American Public Health Association
Breast Cancer Action
Learning Disabilities Association
Results